

**ON August 26, 2015 AT 6:00 P.M., THE HURRICANE CITY PLANNING COMMISSION MET IN THE CITY COUNCIL CHAMBERS LOCATED AT 147 N 870 WEST HURRICANE, UT.**

**Members Present:** John Johnson, Bob Petersen, Paul Farthing, Bill Wilkey, Yovonda Hall, Ryan Cashin, Branden Anderson, and Ralph Ballard

**Staff Present:** Planning Director Toni Foran, Planning Assistant Cindy Beteag, City Council Representative Darin Larson, and City Attorney Fay Reber

The meeting was called to order by Chairman Cashin at 6:00 p.m. The Pledge of Allegiance was led by Branden Anderson and Jerry Spilsbury offered the prayer. Roll call was taken.

**Approval of agenda:** Ryan Cashin stated there is a modification on the agenda for the discussion items. Discussion #1 should read Discussion regarding vacation rentals including all types of short term rentals such as Air BNB, VRBO, and other types under the Land Use Code. Yovonda Hall motioned to approve the August 26, 2015 agenda with the stated changes. John Johnson seconded the motion. Motion carried with all Commissioners voting aye.

**2015-FSP-04 Consideration and possible approval of a final site plan for a hotel located at approximately 768 W State Street- BC Hotel Ventures applicant, Craig Gubler agent**

Toni Foran updated that a shared parking agreement is ready to be recorded for an additional six parking stalls in the north parking lot of the Dairy Queen. Yovonda Hall commented she appreciated the dumpster being moved. She asked Ms. Foran for clarification on the staff comments referring to a duplication. Ms. Foran explained the electrical plan and the landscape plan show four locations where a light pole and a tree are in the same place. She stated that can be worked out in the process to get one of them moved. Branden Anderson asked what light fixtures would be used. Craig Gubler stated hooded. Mr. Gubler stated the colors will mirror Dairy Queen's colors and rock. Ms. Hall stated the pool and landscaping in the back is neighbor friendly. *Yovonda Hall motioned to approve application 2015-FSP-04 based on the finding that it meets the requirements of the land use code and subject to: 1. use of lighting fixtures which are hooded or otherwise shielded to limit the intrusion of light beyond the site; the issuance of a sign permit for the monument sign; coordination of landscaping and parking lot lighting approved by staff; and the issuance of a building permit before work starts on the building. John Johnson seconded the motion. The vote was as follows; John Johnson-Aye, Bob Petersen-Aye, Paul Farthing-Aye, Bill Wilkey-Aye, Yovonda Hall-Aye, Ryan Cashin-Aye, Branden Anderson-Aye, and Ralph Ballard-Aye. Motion carried.*

**Discussion items:**

**1. Discussion regarding vacation rentals and all types of short term rentals such as VRBO, Air BNB, etc**

Ryan Cashin stated he has received a dozen emails since the previous meeting as well as a few discussions with council members and citizens. He stated this will be a big discussion before any recommendations go back to the City Council. He stated the first thing he wanted to discuss is how Air BNB fits into the vacation rental section and what rules should be established if they are allowed. He stated he read Air BNB is defined as any location where someone can sleep overnight from a cot on beach to a tent in backyard to a room within a home. He commented he has a lot of concerns with Air BNB and the City is already seeing some concerns with whole house vacation rentals. He stated one of the comments he has heard from a Council member is their concern with the City's ability to enforce the regulations. He mentioned the current ordinance doesn't define who is in charge of the enforcement. He stated the Council member's suggestion was for the Planning Commission to recommend a repeal of the ordinance to the City Council while keeping in place the resort residential zones that are already permitted until a need and code enforcement can be

determined. He stated he is not opposed to recommending the ordinance be repealed. Bob Petersen asked how it would affect the rentals that already licensed. Toni Foran explained they would be grandfathered in and allowed to keep the license unless they received three citations. She stated if they sold the property, then the license would not be transferable. Yovonda Hall clarified they would still be required to follow the ordinance that was in place when they were approved. Bob asked how many are currently licensed. Toni stated fifteen; however, the City Council has guided staff to accept applications from three builders because staff was aware they were building with the intent to use as a vacation rental. Ryan stated by furthering the ordinance it puts a financial burden on the City because there isn't enough revenue to accommodate enforcement. He stated in addition, vacation rentals compete with the hotels and other projects that are in resort areas. He stated it might be more beneficial to look at promoting those type of projects. Bob clarified the recommendation would be to not allow any further vacation rentals. Ryan stated yes, it would be repeal the ordinance until enforcement has been developed and a study has been done to determine the need.

Toni stated staff will be advertising for a public hearing at the next meeting to add bed and breakfast in the RA.05 zone with a conditional use permit. She explained Bed and Breakfast already has a chapter in the ordinance but this zone was skipped when the ordinance was put in place. Darin Larson stated he is not in favor of repealing the ordinance but he is in favor of the moratorium until the ordinance is reviewed. Yovonda asked if the City could issue the moratorium for six months. Ryan stated it was issued for 120 days. Toni stated she needed to verify with the state code because she believes a moratorium on a zoning ordinance is allowed for six months. She stated she will check with Fay to see why he chose 120 instead of 180 days. Ryan questioned if there was really a need for rentals or if they were just interfering with other potential areas for the City to grow. Bob stated it appears there is already a problem with enforcement. Paul stated the City can make all the rules they want but if they can't enforce them, then it is pointless. Ralph stated he agrees with Darin regarding the moratorium in order to give time to research and see what is needed. He asked staff how many complaints they received before the ordinance was passed. He asked if rentals were discussed because of advertising or because of complaints. Toni stated a little of both but it was hard to enforce because she had to prove they were renting. Ralph stated his impression since the ordinance was passed is people are just looking for issues. He mentioned there a lot of ways to look at this ordinance. He feels it has given a lot of people good opportunities. He stated it is interfering with private enterprises either way because it is stopping people from doing what they want with their property.

Bill asked if it is repealed would it damage the opportunity to enforce the people that aren't following the ordinance. Toni stated that language would need to be left in the ordinance if it is changed. Bob asked if they keep the moratorium in place, would it stop rentals for six months while a study could be done. Ryan stated six months wouldn't be long enough to complete a study. Toni stated when she looked on VRBO the majority that said they were in Hurricane were actually in Razor Ridge in Washington. She stated there were a lot of rentals there and questioned if there was a big enough demand to have more. She stated the City doesn't have the money to do that kind of study. Bill stated either way it will have growing pains. He questioned if repealing the ordinance would only be cutting it off at the knees or if having the moratorium is only postponing the problems. Yovonda stated it was significant from the last meeting that residents don't want commercial use in the neighborhood. Toni stated there were valid points from both sides. Ryan stated this is for all rentals not just whole house rentals. Ryan stated someone brought up all the work that was put into short term rentals but no work being put into long term rentals. Branden stated there are a lot of home owners that don't take care of their yards either so he doesn't feel it is right to require a renter to keep up the yard when home owners are not required. Bob stated his impression from the previous meeting was only two residents causing problems and the current rules could be enforced if the City had the capability.

Ryan suggested getting the average of the hotel occupancy and other condominiums to give idea on the need. Paul stated the impression he got from the last meeting was it is all about money; people can rent their house to large groups cheaper than hotels can. He stated it needs to be regulated like a business. Yovonda stated the original intent of zoning was based on that same theory, that money drew people to businesses so zones were developed, to keep residential and commercial uses separate. Bill stated he helps manage property management and after the last meeting he asked if he could see who was licensed in their development. He found a lot of people were not licensed and did not meet the CCR's. He mentioned it took a lot of work to locate these people and it will take a lot of work to regulate them but at the same time, he is pro rentals. He feels it is good for Hurricane City. Ralph stated it doesn't change anything if it is repealed now or if the moratorium is left. Ryan stated if it is repealed then it would give the Commissioners time to research without a time limit. Ralph stated he thinks it is something that can be decided in the 120 days and should be reviewed. Ryan stated if they are going to leave the moratorium in place, then it needs to be discussed how the Air BNB applies and how it would be regulated because they all fall under the short term rental code. Ralph asked if Air BNB was regulated at this time. Toni stated no because it is not permitted. She stated it is her understanding that it is hard to collect transient room tax because Air BNB isn't set up to capture the tax when people rent off of their website. She stated San Francisco added more regulations and created a department of short term rentals for enforcement of Airbnb type rentals. Ryan suggested making the application fees higher to accommodate hiring an enforcement officer. Toni stated if the Commissioners are inclined to add single room rental like Airbnb, then it could be added to the bed and breakfast ordinance instead of short term rentals. She stated bed and breakfast is conditional use right now in three zones so the Commissioners could review each application. Ryan stated he would rather have Air BNB's than whole house vacation rentals. Toni stated another thing to consider if they are allowed is if the room has to be in the main house or can it be in the casita. Toni stated if the door is open than casitas will be used.

Jerry Spilsbury stated what he hears in his community is people don't have an objection to Air BNB only on the number that is allowed. He suggested only allowing so many per area. Ryan stated he received a comment to put limits on how many are allowed within a certain range. Paul asked how to regulate that. Yovonda stated when the host is present, they are affected more than the neighbors by the renters but when the whole house is rented the renters have more of a tendency to be louder. Ryan asked if the Commissioners agreed that Air BNB fits best under the bed and breakfast ordinance. Commissioners agreed. Ralph stated since collecting sales tax is a concern, he suggested requiring an occupancy tax. Yovonda clarified that during the 120 day moratorium the bed and breakfast ordinance would be modified and a public hearing would be held on the changes. Toni stated she feels the "surprise" of vacation rentals in neighborhoods is what the most concern has been. A public hearing was held but most people weren't aware of the change until they received a letter telling them one would be opening in their neighborhood. Toni stated it still comes back to enforcement. Ryan stated a comment he has heard is to make licensing fees higher to offset enforcement officer. He suggested the licensing fees to be \$300 for Air BNB and \$500-\$750 for VRBO as a yearly fee. Violation fees were discussed.

Darin stated some of the issues are neighbors that just want them out of the neighborhood so they look for anything to get rid of them. Fay stated that whole penalty section needs to be re-written so the three strikes can't be on a complaint but not necessarily a conviction. Darin stated he just stayed at a VRBO in San Diego with a sign right on patio stating no noise after 10 p.m. There was also a clause in the rental agreement that states if a fine is levied, it is passed onto the renter not the owner. Fay stated that is one of the issues that needs to be clarified, if there is a violation who it goes to. He stated the people that make the noise would be cited and the City would never see them again and the owner would never know of the violation. He mentioned having an administrative remedy against the owner so if there is three violations at one location then the owner can be fined. He stated this section really needs to be thought out and rewritten.

Nancy Crowley, a resident of Dixie Springs, stated what she is hearing is “screw the home owner.” She stated she knows rentals in her neighborhood are the cause for noise. She talked about the noise in the middle in the night. She stated the City is putting the burden on the neighbors to regulate. She asked them to please consider the fact that people bought in residential and don’t want commercial around them. They don’t want to regulate it. Ryan stated that is one of the issues the City is trying to fix. They don’t want the neighbors to have to regulate. Fay asked who does regulate it in the middle of the night. He mentioned if there is a problem, then it is citizen initiated to get it solved. Darin mentioned it could be a long term neighbor that is making the noise and it is the process to file a complaint about it. Ryan stated there is a noise ordinance already in place so it doesn’t matter if it is a renter or owner. Fay stated a noise complaint is one of the hardest things to prosecute because you are putting the burden on citizens and everyone’s definition of loud is different. Branden stated he has this issue in his neighborhood and he doesn’t have a vacation rental. He explained his neighbor goes to work at midnight on a motorcycle which wakes his family up but he doesn’t feel it is his place to enforce the noise ordinance. Nancy stated she knows there are problems in neighborhoods but since vacation rentals have been allowed there has been a lot more issues. Bill suggested having a property manager right there so the neighbors had somewhere to report complaints. Nancy stated she doesn’t want to monitor it. Paul stated he agreed with Nancy, people buy in certain areas because that is what they want around them. Ryan stated his fear is they could make all the rules they want but they still don’t have a way to regulate it. He thinks they can work on the Air BNB ordinance and find a solution but the VRBO are a bigger issue that needs more time to review. He stated the National Fire Code states no more than ten people unless the house is sprinkled. Yovonda suggested not having whole house as rental so someone is present when renters are there. Ralph asked if number of occupancy could be tied to number of rooms. Ryan stated that is how it should be. Toni read residential zone definition; *Residential zones allow a wide range of residential land uses at various densities. These zones protect the stability of neighborhoods and encourage, collectively, diverse types of desirable new residential development and protect existing residential uses. The purpose of the R1-15, R1-10, R1-8 and R1-6 zones is to permit development of detached single-family homes on individual lots at medium to high densities. Ancillary uses include churches, schools, and parks to serve neighborhood areas.* She stated there isn’t anything in that definition that talks the use that has been put in there. Form based code was discussed.

Ralph asked how long the moratorium could last. Toni stated the City Council has passed an ordinance for the moratorium to last 120 days. Fay stated State code allows a zoning code issue to last up to six months. Toni pointed out six months is 180 days. Darin stated you can choose a shorter period and the City Council chose 120 days. Fay stated for this case the 180 days may be better. Darin recommended another work session for just the Planning Commission to review the ordinance line by line. Fay stated before that meeting he will work with Toni on the language for the enforcement. Yovonda asked if Air BNB could be looked at to be adopted into the bed and breakfast ordinance while the ordinance is being reviewed. Toni stated yes. Paul stated in residential neighborhoods people know who is there and if rentals are added the dynamics are changed. Toni mentioned when Recreational Resort zones were created one of the requirements is putting the notice of the rental use on the deed so people were aware it was allowed.

Branden stated he thinks Air BNB and VRBO should be in the same short term rental ordinance. He stated to put them in whole house or partial with different sections on how they work. He doesn’t feel Air BNB fits in the bed and breakfast ordinance. Yovonda stated bed and breakfast and Air BNB have the same definition. Commissioners discussed the definitions. Ryan suggested not using the Air BNB term just use short term rental. Yovonda asked how short term was defined. Toni stated less than 30 days. Toni stated right now the way the ordinance is written is short term rental is permitted, not permitted, or conditional use with an asterisk saying see licensing and operations requirements in title 3 of this code. Branden stated if it is changed, casitas will start being rented. Bob stated he doesn’t want to open door to allow casitas as rentals. Yovonda asked what is wrong with using the casita. Ryan stated whatever way it is moved forward an enforcement action needs to be decided.

Yovonda stated whole house rentals need to be treated differently than room rentals. Ryan stated room rentals would be a conditional use permit. Commissioners decided to schedule work meeting. Ralph stated the last work meeting was just a public hearing and he feels it would be more productive if it is just a work meeting. Commissioners decided having it as a work meeting only at 5:00 p.m. on September 23<sup>rd</sup>.

Kevan Adams stated the transient room tax is not a mystery. He explained all that has to be done is apply for a number from the State Tax Commission. The City can verify it is in place before the license is issued. He stated the other mystery is how Air BNB fits into the code. He stated the current bed and breakfast ordinance is for one to four bedrooms that can be used in one home. He stated Air BNB is for one to four people not rooms. If he is doing a bed and breakfast it is the number of rooms not the number of people. He stated he doesn't feel it changes the residential use for the home. He stated it should be dealt with differently allowing for one to four people. He stated it is an accessory use that uses less than 25% of the house and should be allowed. He suggested doing as Cedar City has done and make roomers and boarders an allowed use. He stated a business license should be required and transient room tax is required. Branden stated this is another reason to separate it into something else instead of bed and breakfast. He mentioned the bed and breakfast ordinance works as it is now so don't complicate it. Shellie Adams suggested calling it roomers and boarders instead of bed and breakfast. Toni stated a definition is already in the ordinance for a boarding house and it typically is used for people attending college or something.

## **2. Discussion regarding chickens**

TW Petersen stated he received the minutes from the last meeting when chickens were discussed. He stated he was not present for that meeting and wanted discuss the outcome of not changing the ordinance. Ryan asked if he had any concerns from last meeting. TW stated it appeared the biggest complaint was from neighbors when a rooster was there. He mentioned roosters aren't allowed in residential areas anyway so that shouldn't effect if chickens are allowed. He mentioned chickens were allowed everywhere at one point in Hurricane but then the ordinance changed. He read a quote from the last meeting regarding why the ordinance was put in place. He stated the average parcel of land allows six to eight chickens. He stated his family has had chickens for almost four years and no one knew they had them. He mentioned a lot of people have chickens. He likes having fresh eggs and teaching his kids how to take care of them. He stated one of the concerns that was discussed is in smaller zones it would infringe on neighbors. He stated if you don't have the area you couldn't have it anyway. He feels there are a lot of pros with having chickens. He questioned Fay's comment from the previous meeting about there are already zones that allow them so people have the option to live in zone that allows them if they want them. He stated Mayor Bramall is in favor of allowing chickens. He would like an amendment to allow chickens if the lot is the right size but not in multifamily zones only residential.

He showed Commissioners a map of the zoning in his area. He stated everyone in his neighborhood is in favor of having chickens and they didn't know it wasn't allowed. He mentioned there are only a few R1-6 zones in Hurricane and his particular area is surrounded by areas where chickens are allowed. He pointed out the neighbors that are present are in favor of allowing them. Ryan stated the Commissioners recognize there are some conflicts with the zones and lot sizes not being the right size for the zone. He stated last time a point system was discussed. He suggested looking at the ordinance and perhaps finding a way to accommodate these situations. TW suggested allowing it in all residential zones if they had the lot size. He stated enforcement shouldn't be an issue because a lot of people already have them and aren't being enforced. Darin stated no matter what zone is allowed there may be some exceptions like this subdivision where there is no neighbors to the back. He stated he thought the Commissioners should look at clauses for different situations like this. Yovonda commented safe guards have been built in already so it might be worth looking at modifying the ordinance. She asked Toni about Springdale's ordinance. Toni stated she isn't familiar with that section of their ordinance. Ryan stated this subject could be added to the work meeting on the 23<sup>rd</sup>. Toni stated it could be a

conditional use permit on the smaller lots so the Commissioners could review the specific situations. Bill asked if Hurricane looked at other City ordinances when they developed this ordinance. Toni stated when it was originally done, they were looked at. Yovonda stated if areas don't want chickens, they will have CCR's to not allow them. Ryan stated he likes idea of requiring a conditional use permit on any lot smaller than R1-10. A fee would have to be established. TW asked what a conditional use permit entails. Ryan explained the definition. Branden stated if it is changed he doesn't want to change it to conditional use. Yovonda suggested having staff review the smaller lots instead of the Planning Commission. TW suggested adding a clause that states if you can meet setbacks already in place then it is allowed. Ryan suggested allow them in all residential if it fits the setbacks. Ralph asked for Toni's input. Toni stated most complaints are coops built on the back wall. She stated people don't read the ordinance to see if they are allowed to have them or not so the City doesn't know if they have them or not until a complaint is heard. It was decided to advertise for a public hearing during the September 10 meeting to allow chickens in all R1 zones. Darin asked if they should be allowed in MH/RV zones. Toni stated she wouldn't have a problem if it was only mobile home but not RV. Ralph stated allow it by lot size and not the zone. Darin and Toni will discuss zones and have something to present on the 10<sup>th</sup>.

3. Planning Commission concerns
4. Staff updates

**Meeting adjourned at 8:00 p.m.**